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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,447	11/28/2005	Hendrik Jalink	2007-1014	4168
466 7590 08/01/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER SHEN, BIN	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 08/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/533,447

**Applicant(s)**

JALINK ET AL.

**Examiner**

Bin Shen

**Art Unit**

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-39 is/are pending in the application.
- 4a) Of the above claim(s) 29-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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#### **DETAILED ACTION**

The IDS received 5/2/2005, the preliminary amendment received 5/2/2005 have been entered.

#### ***Election***

Applicant's election with traverse of Group I, claims 20-28, in the reply filed on 5/23/2007 is acknowledged. The traversal is on the ground(s) that the Groups have a specific technical feature in common that distinguishes from the method and device of WO 01/00333. This is not found persuasive because as presented below the specific technical feature among the groups is shown in the prior art Szabo et al. (Radiat Environ Biophys 1992 31:153-160).

The requirement is still deemed proper and is therefore made FINAL.

Claim s 29-39 are nonelected and thus are withdrawn from further consideration.

Only claims 20-28 are presented for examination on the merits.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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1. Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Hak et al. (Radiat Environ Biophys 1990 29:329-336), in view of Szabo et al. (Radiat Environ Biophys 1992 31:153-160).

Hak teaches a method for determining the quality of plant material by determining a chlorophyll fluorescence image of said plant material, wherein the plant material is irradiated with a beam of electromagnetic radiation comprising two such wavelengths (abstract), wherein the beam having the shape of a thin line (laser light beam having the shape of a thin line-page 331, 1<sup>st</sup> full paragraph, line 5); wherein the electromagnetic radiation used to irradiating the plant material having a wavelength of between 200 and 750 nm (632.8 nm-see page 331, 1<sup>st</sup> full paragraph, line 4); wherein the fluorescence radiation originating from the plant material being measured between 600 and 800 nm (690 and 730 nm-see abstract).

Hak does not teach the calculation of the quantum efficiency, the use of a CCD device for the measurement of chlorophyll fluorescence emission spectra of leaves.

Szabo teaches a CCD device to measure the fluorescence emission spectra of leaves (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Hak by use a CCD camera to measure the fluorescence emission spectra of plant because Szabo teach the application of a CCD camera for such measurement. One would have been motivated to make the modification because Szabo's CCD camera allows the non-destructive determination of the chlorophyll content of leaves (abstract, line 21), and would reasonably have expected success in view of Szabo's teaching that complete fluorescence emission

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spectra can be measured with a time resolution between 10 ms and 260 ms, which suggest that the time dependence of the height of the fluorescence ratio is vitality index and indicator of the potential photosynthetic capacity of a leaf (page 159, conclusions). Such the formula to calculate quantum efficiency (e.g., in claim 21) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan having the cited reference before him/her.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

### **Conclusion**

2. No claim is allowed.

Certain papers related to this application may be submitted to Art Unit 1657 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is 571-273-8300. NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry of a general nature or relating to the status

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of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Any inquiry concerning rejections or objections in this communication or earlier communications from the examiner should be directed to Bin Shen, Ph.D., whose telephone number is (571) 272-9040. The examiner can normally be reached on Monday through Friday, from about 9:00 AM to about 5:30 PM. A phone message left at this number will be responded to as soon as possible (i.e., shortly after the examiner returns to her

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office).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571) 272-0925.

*Ralph Gitomer*

RALPH GITOMER  
PRIMARY EXAMINER  
GROUP 1200

*B Shen*

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